



**BILLING CODE 4410-11**

**DEPARTMENT OF JUSTICE**

**Antitrust Division**

**Department of Justice's Initiative to Seek Termination of Legacy Antitrust**

**Judgments**

**AGENCY:** Antitrust Division, Department of Justice.

**ACTION:** Notice of initiative.

**SUMMARY:** This notice describes the Department of Justice's new initiative for seeking unilaterally to terminate "legacy" antitrust judgments. Legacy antitrust judgments are those judgments that do not include an express termination date and that a court has not terminated by an order. The vast majority of these judgments were entered before 1979, when the Division adopted the general practice of using sunset provisions to terminate a judgment automatically, usually 10 years after entry of the judgment. Nearly 1300 legacy judgments remain open on the books of the Antitrust Division, and nearly all of them likely remain open on the dockets of courts around the country. Many of these legacy judgments do not serve their original purpose of protecting competition. To eliminate the burden on defendants, courts, and the Division of complying with, overseeing, and enforcing outdated judgments, the Division has announced an initiative whereby it unilaterally will seek to terminate legacy judgments, as appropriate. The initiative provides for public notice and comment before the Division seeks to terminate a judgment. The Division has established a website to keep the public apprised of this

initiative and its efforts to terminate outdated judgments:

[www.justice.gov/atr/JudgmentTermination](http://www.justice.gov/atr/JudgmentTermination).

**FOR FURTHER INFORMATION CONTACT:** Dorothy B. Fountain, Office of the Chief Legal Advisor, Antitrust Division, U.S. Department of Justice, at (202) 514-3543, [ChiefLegalAdvisor@usdoj.gov](mailto:ChiefLegalAdvisor@usdoj.gov).

**SUPPLEMENTARY INFORMATION:** From the early days of the Sherman Act until the late 1970s, the Antitrust Division of the Department of Justice often entered into judgments to settle violations of the antitrust laws that included no express termination date. In 1979, the Division adopted the general practice of including sunset provisions that automatically terminate judgments, usually 10 years from entry. However, nearly 1300 judgments entered before the Division put the practice into full effect remain on the books of the Division, and nearly all of them likely remain open on the dockets of courts around the country. The vast majority of these outstanding legacy judgments no longer protect competition because of changes in industry conditions, changes in economics, changes in law, or for other reasons. The Division has announced a new initiative that will seek to identify and expedite the termination of such legacy judgments.

**Division review of legacy judgments.** Under the new initiative, announced April 25, 2018, the Division will review its legacy judgments to identify those that no longer protect competition. The Division has assigned each legacy judgment to a Division attorney. Using court papers, information available in Division files, and public information, attorneys will review each judgment to determine whether changes in industry conditions, changes in economics, changes in the law, or other factors have rendered the judgment outdated and appropriate for termination. Examples of legacy

judgments for which termination may be appropriate include judgments whose terms have been completely satisfied, judgments governing defendants who are deceased or no longer in existence, and judgments governing products that no longer are produced.

**New termination process for legacy judgments.** Once the Division identifies judgments appropriate for termination, it will list those judgments on a website established for purposes of informing the public of the progress of the initiative: [www.justice.gov/atr/JudgmentTermination](http://www.justice.gov/atr/JudgmentTermination). The Division will invite the public to submit comments within 30 days of listing on the website regarding the Division's assessment that termination is appropriate. This website will identify the name of the case, the court that entered the judgment, the date the court entered the judgment, and the date by which comments are due to the Division; the website also will link to the text of the judgment. The Division will consult with the relevant court to determine the most appropriate means of termination.

The Division has established an email address through which the public may submit comments: [JudgmentTerminationComments@usdoj.gov](mailto:JudgmentTerminationComments@usdoj.gov). Members of the public are encouraged to supply any additional information they may have regarding the efficacy of judgments the Division proposes to terminate. Absent public comments or other factors that lead the Division to revise its determination that termination of a judgment is appropriate, it will proceed as directed by the court. In many cases, this will entail filing a motion to terminate. When feasible and when allowed by local rules, the Division will seek to terminate judgments in "batches." That is, rather than file a motion for each judgment it seeks to terminate, the Division would make a single filing seeking

to terminate a group of judgments in the same court. In this way, the Division hopes to expedite termination and ease the burden on the courts of reviewing multiple motions.

**Existing process for modification of judgments unaffected.** The new initiative does not replace the Antitrust Division's existing process for consenting to a defendant's request to modify or terminate an existing antitrust judgment. Defendants still may seek the Division's consent to terminate or modify any judgment as described in the Antitrust Division Manual (see Section III.H.5, <https://www.justice.gov/atr/file/761141/download>).

**Mailing list for updates.** Members of the public interested in receiving notice of updates to the public website, including posting of judgments that the Division believes should be terminated, may subscribe to email updates at <https://public.govdelivery.com/accounts/USDOJ/subscriber/new>.

Dated: April 30, 2018.

**Dorothy B. Fountain,**

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